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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,608	08/22/2003	Yoshio Sugimoto	2895-0138P	8586

2292 7590 11/28/2005

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EXAMINER

THEXTON, MATTHEW

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

18

Office Action Summary	Application No.	Applicant(s)	
	10/645,608	SUGIMOTO ET AL.	
	Examiner	Art Unit	
	Matthew A. Thexton	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Text of Title 35 USC not Cited

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims Version

The claims as originally filed have been examined

Double Patenting

Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6838510 in view of Baba et al. (JP 01-40566-A, also known as JP 64-40566-A, as evidenced by the USPTO obtained translation) and Malm et al. (US 6017989A).

The difference between the present claims and those of the '510 reference is the further inclusion of aluminum flake pigment which has been surface coated with a polymer containing acrylic acid, an acrylic acid ester, epoxylated polybutadiene, and divinylbenzene.

Reference '566 discloses aluminum flakes having a resinous coating formed from epoxidized 1,2-polybutadiene, trimethylolpropane triacrylate, acrylic acid, and divinylbenzene (example) which are suggested for use in metallic paint and filler of synthetic resin compositions. Reference '510 contemplates pigments for its molding composition (column 8, lines 22-29).

Art Unit: 1714

Reference '989 discloses exterior automotive vehicle parts made of elastomer modified polyolefins (in the same technology application as '510) which contain special effect pigments such as aluminum flake (column 6, lines 45-67, column 4, lines 1-3 and 25-52) in amounts encompassed by Applicant's claimed subject matter (claim 11).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the specific pigment of reference '566 in the mixtures of reference '510 in order to obtain the benefits disclosed in '566 and since pigments are broadly suggested and it is known in the art that pigments include special effect pigments such as aluminum flake as evidenced by '989 and one would have a reasonable expectation of suitability.

35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim Rejections

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto et al. (WO 02/094933, as evidenced by US 6838510B2) in view of Baba et al. (JP 01-40566-A, also known as JP 64-40566-A, as evidenced by the USPTO obtained translation) and Malm et al. (US 6017989A).

Art Unit: 1714

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a certified translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

The difference between the present claims and those of the '510 reference is the further inclusion of aluminum flake pigment which has been surface coated with a polymer containing acrylic acid, an acrylic acid ester, epoxylated polybutadiene, and divinylbenzene.

Reference '566 discloses aluminum flakes having a resinous coating formed from epoxidized 1,2-polybutadiene, trimethylolpropane triacrylate, acrylic acid, and divinylbenzene (example) which are suggested for use in metallic paint and filler of synthetic resin compositions. Reference '510 contemplates pigments for its molding composition (column 8, lines 22-29).

Reference '989 discloses exterior automotive vehicle parts made of elastomer modified polyolefins (in the same technology application as '510) which contain special effect pigments such as aluminum flake (column 6, lines 45-67, column 4, lines 1-3 and 25-52) in amounts encompassed by Applicant's claimed subject matter (claim 11).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the specific pigment of reference '566 in the mixtures of reference '510 in order to obtain the benefits disclosed in '566 and since pigments are broadly suggested and it is known in the art that pigments include special effect pigments such as aluminum flake as evidenced by '989 and one would have a reasonable expectation of suitability.

Art Unit: 1714

Conclusion

This action is NON-FINAL in view of the new grounds of rejection.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew A. Thexton whose telephone number is 571-272-1125. The examiner can normally be reached on Monday-Friday, 9:30 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasudevan S. Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. A. Thexton

Matthew A. Thexton
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Art Unit 1714
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